

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
SUNITHA GUNTIPALLY,
Defendant.

Case No. 16-cr-00189-JSC-1

**ORDER RE: MOTION FOR
CERTIFICATE OF APPEALABILITY**

Re: Dkt. No. 456

Before the Court is Defendant Sunitha Guntipally's motion for certificate of appealability of this Court's order denying her motion to vacate, set aside or correct her sentence pursuant to 28 U.S.C. § 2255. (Dkt. No. 456; *see* Dkt. No. 455.)¹ "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Ms. Guntipally's interpretation of *ITServe Alliance, Inc. v. Cissna*, 443 F. Supp. 3d 14, 38–43 (D.D.C. 2020), is not reasonable. *ITServe* held that USCIS's rules requiring proof of non-speculative work assignments and corresponding itineraries exceeded its rulemaking authority. That does not change the standard for whether Ms. Guntipally's fraudulent statements to USCIS were material to its decisions on H-1B visa applications. (*See* Dkt. No. 455 at 4–5.) Applicants are required to be truthful regardless of whether USCIS can require employers to provide certain kinds of proof. (*See* Dkt. No. 165 at 3–4 (plea agreement).) Nor does *ITServe* conflict with

¹ Record citations are to material in the Electronic Case File ("ECF") for Case No. 16-cr-00189-JSC-1; pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 *United States v. Leonti*, 326 F.3d 1111, 1116 (9th Cir. 2003), which generally explains when an
2 evidentiary hearing on a Section 2255 motion is required.

3 Accordingly, Ms. Guntipally has not demonstrated that this Court's assessment of her
4 constitutional claims is debatable or wrong. The motion is DENIED.

5 This Order disposes of Docket No. 456.

6 **IT IS SO ORDERED.**

7 Dated: July 15, 2022

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10 JACQUELINE SCOTT CORLEY
11 United States District Judge
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